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IN THE

Supreme Court of the United States

October Term, 1959.

No. 172.

EUGENE DUPREE, *Petitioner,*

v.

THE UNITED STATES OF AMERICA.

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI.

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I.

FURTHER STATEMENT OF THE CASE.

On October 12, 1959 this Court denied petition for writ of certiorari without Opinion.

Petitioner's action is founded on defendant's 1950 ex parte assumption that petitioner was disloyal (2a) and upon the defendant's five years persistence in that assumption in the absence of affording petitioner a reasonable administrative proceeding to refute or to seek to refute that assumption (3a).

Petitioner experienced injury from that assumption of his disloyalty. The alleged injury was in two unrelated areas.

One area of injury arose from the strain of being assumed disloyal, which strain caused a permanent disability to petitioner's eye, a detached retina (4a).

The other area of injury arose also from the assumption of disloyalty, which classification prevented petitioner obtaining employment as a licensed ship's captain (3a).

The Court Below concentrated its attention upon that second area of injury.

The Court Below dismissed petitioner's complaint by viewing that second area of injury as the cause of action rather than as an alleged area of damage.

II.

QUESTION.

Should the interference with contract rights exception to the Federal Tort Claims Act be restricted to direct tortious interference with contract rights and to the exclusion of resultant areas of injuries from other torts?

III.

ARGUMENT.

Petitioner alleges the Government acted negligently by its ex parte classifying him disloyal and in thereafter failing to afford a reasonable administrative proceeding for refutation of that classification. Those were the alleged acts of negligence.

The alleged areas of injury were the result of those alleged negligent acts of classification. *Hatahley v. U. S.*, 173, 76 S. Ct. 745, 100 L. Ed. 1065. The areas of injury were the natural and probable consequences flowing from the acts of negligent classification.

"There is no justification for this Court to read exceptions into the Act beyond those provided by Congress." *Rayonier v. U. S.*, 350 U. S. 315, 320.

There is nothing in the Federal Tort Claims Act that indicates Congress intended the interference with contract rights exception to provide immunity for an area of injury as distinguished from immunity for a specified type of tortious conduct. The interference with contract rights exception is listed along with other exceptions; namely, assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit and interference with contract rights.

The Court Below applies the interference with contract rights exception to an area of resultant damage.

Petitioner's action is founded on defendant's negligent classification. That classification caused an interference with petitioner's prospective contract rights. The Court Below treats that resultant interference as if it were the cause, not the result from the cause.

Had there been no negligent classification the petitioner would have experienced no injury and there would have been no resultant interference with his prospective contract rights nor permanent injury to his eyes.

Tortious conduct which causes either personal or property injury thereby frequently interferes with existing or prospective contract rights. This is so because the injury interferes with the availability or the productivity of the injured person or property.

Neither a damaged barge, nor a burnt forest, nor killed airline passenger was as available or as productive, nevertheless, the public treasury paid for those injuries. *Indian Towing Co. v. U. S.*, 350 U. S. 61, 76 S. Ct. 122, 100 L. Ed. 48; *Rayonier v. U. S.*, 352 U. S. 315, 77 S. Ct. 374, 1 L. Ed. 2d 354; *U. S. v. Union Trust Co.*, 250 U. S. 907, 76 S. Ct. 192, 100 L. Ed. 799.

Respectfully submitted,

William J. Woolston,
2015 Land Title Bldg.,
Philadelphia 10, Pa.,
Attorney for Petitioner.

And Now comes William J. Woolston, Esq., attorney for petitioner and certifies that this petition for rehearing is presented in good faith and not for delay, and the petition is restricted to grounds not previously presented.

William J. Woolston.